IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 27177 of 2003

Between:

M/s.Dolphin Nooks Restaurant, Vijayawada,Krishna Dist. rep.by Padilam Nageswara Rao, R/o.plot No.681/A, L.B.S,Nagar, Payakapuram, Vijayawada, Krishna Dist.

..... PETITIONER

AND

1 The Commissioner of Police, Vijayawada, Krishna Dist.
2 The Assistant Commissioner of Police, Vijayawada, Krishna

District.
3 The Sub-Inspector of police, III Town Police Station,

Governorpet,Vijayawada, Krishna Dist.
4 Vijaya Krishna Super Bazar, a unit of Vijayawada, Co-op

Central Sores Ltd.,Vijayawada-2.
5 The District Collector, Krishna Dist. at Machilipatnam.
(R-5 is impleaded as per Court Order Dated 28-01-2004

in W.P.M.P.No.1835/2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the Respondent Nos.1 to 3 herein in not proceeding further in connection with Cr.No.567/2003, though the said Crime was registered on 20-12-2003 as arbitrary, illegal and unjust and consequently direct the Respondents 1 to 3 herein to recover the entire article taken away by the 4th respondent i.e., 4 A.C.Machines, 6 chairs and 2 sign boards etc., and further direct the Respondent

Nos.1 to 3 herein to provide protection to the petitioner, and to grant such other relief or reliefs as this Hon'ble court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: SMT.G.JYOTHI KIRAN

Counsel for the Respondent Nos.1 to 3: G.P. FOR HOME

Counsel for the Respondent Nos.4 and 5: None appeared

The Court made the following :

Order:

Heard both sides and at their request the main writ petition itself is taken up for disposal.

The petitioner, who claims to be in occupation of the premises in question, filed this writ petition, inter alia, seeking writ of Mandamus for declaration that the action of respondent Nos.1 to 3 herein viz., the Police authorities in not taking further action in crime No.567 of 2003, which was registered on 20-12-2003, as illegal and also for further direction to recover the entire articles taken away by the 4th respondent and to provide sufficient protection for the petitioner.

The case of the petitioner in brief is that it is running a restaurant on the terrace

portion of the building, belonging to the 4th respondent herein, which has been taken on lease in the year 1991. It is further case of the petitioner that the respondent No.4 with the connivance and help of the respondent Nos.1 to 3 and 5, have illegally trespassed and broke up a lock and taken possession without any prior notice or without any justifying cause. The petitioner had, in fact, filed a civil suit O.S.No.955 of 2003 on the file of the Principal Senior Civil Judge, Vijayawada, wherein in an interlocutory application, Court has granted the orders of status-quo on 25-11-2003, which are in force. In regard to such highhanded action, the petitioner has lodged a complaint on 19-12-2003 before the 3rd respondent. Though the crime was registered, no action has been taken. Neither re-delivery is given nor the articles have been recovered. Hence, the Writ Petition.

In the counter-affidavit filed by the respondent Nos.1 to 3 it is admitted that the possession of the premises in question was taken from the petitioner, but only in pursuance of a letter dated 31-08-2003 issued by the 5th respondent viz., the District Collector, Krishna District, and wherein it was directed that the 4th respondent should break open the lock and conduct a panchanama and preserve the property in a room under lock and key and seal the premises in the presence of police and revenue officials. Therefore, it was submitted that the petitioner is not entitled to any indulgence from this Court.

On a consideration of the submissions made and also on perusal of the material it is seen that the complaint of the petitioner is about the highhanded act on the part of the respondents in taken possession of the premises. It is the case of the petitioner that the entire action was at the instance of the 4th respondent herein, but however, in the counter filed by the respondent Nos.1 to 3, which has been sworn to by the concerned Sub-Inspector of Police, Governorpet Crime P.S., Vijayawada City, it is shown that the possession was taken only in pursuance of the letter issued by the District Collector on 31-08-2003. Except barely stating about such letter, no reason has been shown as to why and on what purposes the premises sought to be put under lock and possession is sought to be taken from the petitioner. Admittedly, no notice or prior intimation has been given to the petitioner before taking any such serious action. There is also no dispute in regard to the fact that the petitioner is admittedly in possession and running a restaurant. However, in view of the fact that a civil suit is pending before the civil Court, this court refrains from going into all such

controversial facts and it is felt more desirable that the said Court should go into all such questions and grant appropriate reliefs to the petitioner, in the event it is found that the possession is taken illegally.

In the circumstances, the Writ Petition is, accordingly, disposed of directing the Principal Senior Civil Judge at Vijayawada, for considering the interlocutory application filed in O.S.No.955 of 2003, after giving notice to the respondent Nos.1 to 3 and also the respondent No.5 herein, and after conducting an enquiry, and pass orders in accordance with law. In the event it is found that the petitioner has been illegally dispossessed, it is needless to mention that the petitioner would be entitled to restitution. The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this order. No costs.

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B.PRAKASH RAO, J.

Dated 01-09-2004.

skmr

To

1. The Principal Senior Civil Judge, Vijayawada.

2. The Commissioner of Police, Vijayawada, Krishna District.
3. The Assistant Commissioner of Police, Vijayawada, Krishna

District.
4. The Sub-Inspector of police, III Town Police Station,

Governorpet,Vijayawada, Krishna Dist.
5. The District Collector, Krishna District at Machilipatnam.

6. 2CCs to G.P. for Home, High Court Buildings, Hyderabad,

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